

Russell D. Garrett, WSBA #18647
russell.garrett@jordanramis.com
JORDAN RAMIS PC
1499 SE Tech Center Place, Ste. 380
Vancouver, Washington 98683
Telephone: (360) 567-3900
Facsimile: (360) 567-3901

Attorneys for Easterday Dairy, LLC

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re

EASTERDAY RANCHES, INC., et al.,

Debtors.

Chapter 11

Lead Case No. 21-00141-WLH11
Jointly Administered

OBJECTION TO MOTION FOR AN
ORDER DIRECTING RULE 2004
EXAMINATIONS OF DEBTORS AND
NON-DEBTOR PARTIES

Non-Debtor Easterday Dairy, LLC (hereinafter “Dairy”) objects to the Notice and Motion for an Order Directing Rule 2004 Examinations of the Debtors and Non-Debtor Parties [Docket No. 644] (the “2004 Request”) filed on April 27, 2021, by the Official Committee of Unsecured Creditors for Easterday Ranches, Inc. (the “Ranches Committee”), because the motion is overbroad directing not only production of documents by order improperly, but also by establishing interrogatories improperly and without due process. Dairy is willing to voluntarily produce documents and provide testimony to the extent that the scope of the inquiry is tailored to the areas of inquiry necessary for the Ranches Committee to be able to evaluate the Debtor’s financial affairs and proposed plan. Indeed, Dairy is willing to provide information about the operation, financial affairs, transactions between the related entities and testimony where helpful without an order. This objection is based upon the Points and Authorities herein and the Court’s records and files. In short, Dairy has no objection to the Court’s entry of an order authorizing

Ranches Committee to conduct discovery pursuant to Fed. R. Bankr. P. 2004. This objection is focused on the requested relief well beyond the Rule and the Ranches Committee's failure to follow procedure prior to filing the motion as well as respect for the procedure outlined in the Rule itself.

THE RANCHES COMMITTEE'S MOTION IS PREMATURE

The Ranches Committee's motion for 2004 exam was filed without conferring as required by Local Rule. LR 2004-1(a) which requires a movant for the 2004 exam to coordinate the time and place of the examination before filing the 2004 exam or request with the Court. In this case, the certification filed by Ranches Committee's counsel confirms that no attempt to comply with the local rule ever occurred.

Moreover, the motion, proposed order and notice seeks information already supplied to the Debtor's in possession agent and the Department of Justice. Until the Ranches Committee has reviewed those documents, there is no need to enter an order requiring production of documents and identification of information (interrogatories). The current notice and proposed inquiry is excessive, without limit or focus and incredibly expensive. The Ranches' Committee's request, as an example, includes inquiries into every individual associated with Dairy and all related entities including all digitally stored information on each person's personal devices. Dairy is not opposing production of electronically stored information but requiring all individuals to furnish digitally stored text message, messages from What's App and related applications is very expensive and requires discovery of both personal and unrelated information as well as any possible related information.

Since January 2021, both Easterday Farms and Easterday Ranches have been run by an independent board of directors hired by Paladin Management Group, LLC in order to manage the

debtors' operations. To Dairy's knowledge Paladin Management Group, LLC has complete control of the debtors' records. To Dairy's knowledge, debtors' management has already assembled a massive amount of documentary information not only for itself, but also has produced a significant amount of documentation to the United States Department of Justice in response to a subpoena duces tecum. Accordingly, the debtors and Paladin Management Group, LLC have control of the documents, with limited exceptions that Easterday Ranches' Unsecured Creditor's Committee wishes to obtain. To Dairy's knowledge, Easterday Ranches Unsecured Creditor's Committee has not reviewed the documentation available to it through the debtors and Paladin Management Group, LLC.

THE RANCHES COMMITTEE'S MOTION DOES NOT COMPLY WITH FED. R. BANKR. P. 2004 AND THE PROCEDURES ASSOCIATED THEREWITH

The motion and order do not comply with Fed. R. Bankr. P. 2004. The motion seeks an order requiring parties and non-appearing entities to be subject to an order requiring production of documents, responses to Interrogatories and examination. Rule 2004 incorporates Rule 9016 (applying CR 45) Rule 2004(c). Accordingly, while the Ranches Committee may be entitled to an order for a 2004 examination, the scope of the document request and the ability to compel witnesses to attend is limited to CR 45 and the protections under that Rule for disputes related to the scope of the examination and the document production. Civil Rule 45 prescribes procedural safeguard as outlined above. CR 26 is similarly applied to Fed. R. Bankr. P. 2004 through Fed. R. Bankr. P. 9014. Under that analysis, discovery that is "unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive" should be attempted. *In re Fin. Corp. of AM.*, 119 B.R. 728, 738 (Bankr. C.D. Cal. 1990). Most importantly, unlike the extensive set of document requests and interrogatories contained in the Notice the Ranches Committee seek to be ordered, the requests

should be proportional. This approach is contrary to the approach designed by the Rule and puts the recipient of the order in an untenable position. Without the procedural safeguards of CR 45, any dispute relating to the scope and proportionality of the requests ordered by the Court requires a motion to vacate the order or seek relief from the order, in whole or in part, and subjects the recipient of the order to contempt for failing to abide by the order. This is not the purpose of Fed. R. Bankr. P. 2004 despite its otherwise very broad reach.

THE MOTION IS OVERBROAD

While the Ranches Committee has standing to seek discovery, the purpose must fit within its role. Fed. R. Bankr. P. 2004 is extremely broad but is not without limits. The purpose of Fed. R. Bankr. P. 2004 is primarily focused on an inquiry into the debtor's acts, conduct or financial affairs in order to discover the existence and location of assets of the estate. *In re Dinubilo*, 177 B.R. 932, 940 (E.D. Cal. 1993).

Given that the agent for the Debtor in possession has already completed substantial discovery, and the Department of Justice already completed substantial discovery, it is unclear what the Ranches Committee seeks to discover. Regardless of the prior plethora of documents and information, the current proposed notice requiring Dairy, and others, to provide documents, digitally stored information, and information that is the subject of interrogatories, to the level of detail requested, is well outside the scope of Ranches Committee's legitimate inquiry. In any event, seeking the same exact documents from multiple parties is both onerous and burdensome not to mention expensive. The latter is important to consider in the context of proportionality as require by the Federal Rules of Civil Procedure.

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DAIRY IS ENTITLED TO A PROTECTIVE ORDER

To the extent that the Court decides to review the discovery requests item by item in the extensive requests contained in the Motion and proposed Order and Notice, the parties who are or may be subject to the Order are entitled to a protective order a.) To limit the scope to a reasonable inquiry about legitimate issues that the Ranches Committee has; b.) To limit the disclosure of the documents and testimony from third parties in order to protect legitimate interests related to the current business interests of the parties and the strategic decisions related to those interests; and c.) to a provision in the order that requires the Ranches Committee to pay the reasonable costs related to the discovery beyond limits that the Court sets.

CONCLUSION

Dairy has no objection to a Fed. R. Bankr. P. 2004 exam order that allows Ranches Committee to request documents and exam witnesses. Dairy will participate voluntarily in that process. However, due process must be satisfied and CR 45 limits the scope of the inquiry to the subpoena process for both witness testimony and the production of documents. Nowhere in the Rule does it provide for an order requiring production of documents, interrogatories and witness testimony. Once the Ranches Committee is provided with an order authorizing it to conduct its discovery under Fed. R. Bankr. P. 2004, it must then comply with the rules under CR 45 and 26. The respondents are entitled to the procedural safeguards accorded under those rules. Disputes, of the kind that are being heard at this point, are premature and should be heard by the Court after the order has been approved, and either objections to the subpoenas and subpoena duces tecum have been served or a motion for a protection order has been filed by a respondent. An order requiring a recipient such as Dairy to respond to a request for production, interrogatory or

other inquiry as detailed in the extensive requests, subjects that recipient to civil contempt for failure to obey the order. That is not the purpose of a 2004 exam order.

Dairy requests the Court either deny the order as proposed or allow the order merely authorizing the Ranches Committee to conduct discovery pursuant to the Rule and without ordering any form of notice or discovery.

DATED this 28th day of May, 2021.

JORDAN RAMIS PC

By: /s/ Russell D. Garrett

Russell D. Garrett, WSBA #18657

russell.garrett@jordanramis.com

Attorneys for Easterday Dairy, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the date shown below, I served a true and correct copy of the foregoing OBJECTION TO MOTION FOR AN ORDER DIRECTING RULE 2004 EXAMINATIONS OF THE DEBTORS AND NON-DEBTOR PARTIES with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

U.S. Trustee
US Court House
920 W. Riverside Ave, Suite 593
Spokane, WA 99201
US Trustee

Gary W Dyer
U S Trustee's Office
920 W Riverside Ave, Suite 593
Spokane, WA 99201
Email: Gary.W.Dyer@usdoj.gov
Attorneys for US Trustee

Thomas A Buford
Bush Kornfeld LLP
601 Union Street, Suite 5000
Seattle, WA 98101
Email: tbuford@bskd.com
jdulberg@pszjlaw.com mlitvak@pszjlaw.com
Attorney for Debtors

Richard B Keeton
Bush Kornfeld LLP
601 Union Street #5000
Seattle, WA 98101
Email: rkeeton@bskd.com
gdowning@pszjlaw.com
bdowning@pszjlaw.com
plabov@pszjlaw.com jrosell@pszjlaw.com
pszj@ecfalerts.com
Attorney for Debtors

Ira D. Kharasch
Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Email: ikharasch@pszjlaw.com
Attorney for Debtors

Armand J Kornfeld
Bush Kornfeld LLP
601 Union St, #5000
Seattle, WA 98101-2373
Email: jkornfeld@bskd.com
Attorney for Debtors

Jason M Ayres
Foster Garvey P.C.
121 SW Morrison Street, Suite 1100
Portland, OR 97204-3141
Email: jason.ayres@foster.com
Attorney for Creditor Committee – Animal
Health International, Inc.

Tara J. Schleicher
Foster Garvey P.C.
121 SW Morrison, 11th Floor
Portland, OR 97204
Email: tara.schleicher@foster.com
Attorney for Creditor Committee – Animal
Health International, Inc.

Christopher Durbin
Cooley LLP
1700 Seventh Avenue, Suite 1900
Seattle, WA 98101
Email: cdurbin@cooley.com,
cspeckhart@cooley.com,
jindyke@cooley.com, mklein@cooley.com
Attorney for Creditor Committee
Official Committee of Unsecured Creditors
of Easterday Ranches, Inc.

Jay R. Indyke
COOLEY LLP
55 Hudson Yards
New York, NY 10001
Email: jindyke@cooley.com
Attorney for Creditor Committee
Official Committee of Unsecured Creditors
of Easterday Ranches, Inc.

Michael Klein
Cooley LLP
55 Hudson Yards
New York, NY 10001
Attorney for Creditor Committee
Official Committee of Unsecured Creditors
of Easterday Ranches, Inc.

Joseph M. Welch
Buchalter, A Professional Corporation
18400 Von Karman Ave., Suite 800
Irvine, CA 92612
Email: jwelch@buchalter.com
Attorney for Creditor Committee
Official Committee of Unsecured Creditors
of Easterday Farms, a Washington General
Partnership

Cullen D. Speckhart
COOLEY LLP
55 Hudson Yards
New York, NY 10001
Email: cspeckhart@cooley.com
Attorney for Creditor Committee
Official Committee of Unsecured Creditors
of Easterday Ranches, Inc.

Sarah M. Schrag
Dentons US LLP
303 Peachtree Street, NE, Suite 5300
Atlanta, GA 30308
Email: sarah.schrag@dentons.com
Attorney for Creditor Committee
Official Committee of Unsecured Creditors
of Easterday Ranches, Inc.

Bruce K Medeiros
Davidson Backman Medeiros
601 West Riverside Avenue, Suite 1550
Spokane, WA 99201
Email: bmediros@dbm-law.net
Attorney for Creditor Committee - J.R.
Simplot

DATED: May 28, 2021.

/s/ Russell D. Garrett

Russell D. Garrett, WSBA #18657
russell.garrett@jordanramis.com
Attorneys for Easterday Dairy, LLC

